

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WENDY LEE MOORE, RICHARD  
ANDREW TARANTINO, JR., dba T&M  
CONSTRUCTION

Petitioners,

v.

WELLS FARGO BANK, UNITED STATES  
OF AMERICA INTERNAL REVENUE  
SERVICE

Respondents.

No. C 07-02860 CRB

**ORDER DISMISSING PETITION TO  
QUASH, GRANTING MOTION FOR  
SUMMARY ENFORCEMENT**

Petitioners Wendy Lee Moore and Richard Andrew Tarantino move to quash an Internal Revenue Service ("IRS") summons served on Wells Fargo bank in April 2007. Tarantino did not file Form 1040 federal income tax returns for the years 1990-93, 1999-2001, and 2003. Accordingly, the IRS assessed Tarantino over \$284,000 in unpaid tax liability. Pursuant to 26 U.S.C. § 7602(a)(2), IRS Revenue Officer Richard Lowe issued a summons to Wells Fargo Bank to produce records pertaining to all accounts in the name of T&M Construction, a corporation under whose name Tarantino does business or has done business.

The Internal Revenue Code features a special notice provision where, as here, the IRS issues a summons to a third party. See 26 U.S.C. § 7609(a). Critically, a party has no standing to initiate an action to quash a third-party summons unless they are entitled to notice

1 under § 7609(a). See Ip v. United States, 205 F.3d 1168, 1170 n.3 (9th Cir. 2000). The  
 2 petition to quash must be dismissed because petitioners were not entitled to notice under §  
 3 7609(a), and therefore do not have standing. The IRS is relieved of its notice obligation  
 4 when it issues a summons in aid of the collection “of an assessment made . . . against the  
 5 person with respect to whose liability the summons has issued.” 26 U.S.C. §  
 6 7609(c)(2)(D)(i). As explained by the Ninth Circuit in Ip, this exception applies “where the  
 7 assessed taxpayer has a recognizable [legal] interest in the records summoned.” 205 F.3d at  
 8 1176 (citation and internal quotation marks omitted). Because Tarantino does business or  
 9 has done business under the name T&M Construction, there is no doubt that he has a  
 10 recognizable legal interest in T&M’s financial records.<sup>1</sup> The petition to quash is  
 11 DISMISSED WITHOUT PREJUDICE.

12 The IRS has cross-motined for summary enforcement of its summons. Because IRS  
 13 summonses are not self-enforcing, the government must seek enforcement from a federal  
 14 district court if the person on whom a summons has been served refuses to comply. See  
 15 United States v. Samuels, Kramer & Co., 712 F.2d 1342, 1344-45 (9th Cir. 1983). Revenue  
 16 Officer Lowe’s sworn declaration – providing that the summons was issued for the legitimate  
 17 purpose of collecting previously assessed income taxes, the summonsed information may be  
 18 relevant to the collection of assessed taxes, the information is not in the possession of the  
 19 IRS, and all administrative steps required by the IRC have been taken – is sufficient to satisfy  
 20 the government’s prima facie burden of establishing that its use of the summons is “in good  
 21 faith.” See id. at 1344-45.

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 25 <sup>1</sup> Petitioners also challenge the summons on the ground that release of their financial  
 26 information would violate their rights under the Right to Financial Privacy Act, 12 U.S.C. §  
 27 3413. Although that statute protects against the disclosure of financial information to the  
 28 government except upon certain conditions, it contains an exception where information is sought  
 pursuant to the IRC. See 12 U.S.C. § 3413(c) (“Nothing in this chapter prohibits the disclosure  
 of financial records in accordance with the procedures authorized by Title 26.”). Because the  
 IRS followed appropriate Title 26 procedures in issuing the summons, § 3413(c)’s exception  
 applies in this case. See Lidas, Inc. v. United States, 238 F.3d 1076, 1083 (9th Cir. 2001).

Petitioners, on the other hand, have not satisfied their “heavy” burden of alleging specific facts that support their allegations of bad faith. See id. at 1348. Petitioners forward “mere conclusory allegations” of bad faith rather than “specific facts and evidence.” United States v. Tanoue, 94 F.3d 1342, 1346 (9th Cir. 1996) (quotation and citation omitted). Accordingly, the government’s motion for summary enforcement is GRANTED.

**IT IS SO ORDERED.**

Dated: September 21, 2007

  
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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE